



## **RFP No: 3627**

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INVITATION: Sealed proposals, subject to the attached conditions, will be received at this office until April 13, 2010 @ **3:00 p.m.** Central Time for the acquisition of the products/services described below for Mississippi Department of Information Technology Services.

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| SAN and Ethernet Network Components and Services |
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**The Vendor must submit proposals and direct inquiries to:**

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|---|
| Paula Conn<br>Technology Consultant<br>Information Technology Services<br>Suite 508, 301 N. Lamar Street<br>Jackson, MS 39201-1495<br>(601) 359-4411<br>Paula.Conn@its.ms.gov |
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To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. The following must be clearly typed on a label affixed to the package in a clearly visible location:

|  |
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| PROPOSAL, SUBMITTED IN RESPONSE TO<br>RFP NO. 3627<br>due April 13, 2010 @ 3:00 p.m.,<br>ATTENTION: Paula Conn |
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**David L. Litchliter**  
**Executive Director, ITS**

## ITS RFP Response Checklist

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RFP Response Checklist: These items should be included in your response to RFP 3627.

- \_\_\_\_\_ 1) One clearly marked original response and five (5) identical copy/copies of the complete proposal. Label the front and spine of the three-ring loose-leaf binder with the Vendor name and RFP number. Include the items listed below inside the binder. Please DO NOT include a copy of the RFP in the binder.
- \_\_\_\_\_ 2) *Submission Cover Sheet*, signed and dated. (Section I)
- \_\_\_\_\_ 3) *Proposal Bond*, if applicable (Section I)
- \_\_\_\_\_ 4) *Proposal Exception Summary*, if applicable (Section V)
- \_\_\_\_\_ 5) Vendor response to *RFP Questionnaire* (Section VI)
- \_\_\_\_\_ 6) Point-by-point response to *Technical Specifications* (Section VII)
- \_\_\_\_\_ 7) Vendor response to *Cost Information Submission* (Section VIII)
- \_\_\_\_\_ 8) *References* (Section IX)

## Table of Contents

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|  |    |
|--|----|
| SECTION I .....                                      | 4  |
| SUBMISSION COVER SHEET & CONFIGURATION SUMMARY ..... | 4  |
| PROPOSAL BONDS .....                                 | 5  |
| SECTION II .....                                     | 6  |
| PROPOSAL SUBMISSION REQUIREMENTS .....               | 6  |
| SECTION III .....                                    | 10 |
| VENDOR INFORMATION .....                             | 10 |
| SECTION IV .....                                     | 14 |
| LEGAL AND CONTRACTUAL INFORMATION .....              | 14 |
| SECTION V .....                                      | 27 |
| PROPOSAL EXCEPTIONS .....                            | 27 |
| PROPOSAL EXCEPTION SUMMARY FORM .....                | 29 |
| SECTION VI .....                                     | 30 |
| RFP QUESTIONNAIRE .....                              | 30 |
| SECTION VII .....                                    | 33 |
| TECHNICAL SPECIFICATIONS .....                       | 33 |
| SECTION VIII .....                                   | 46 |
| COST INFORMATION SUBMISSION .....                    | 46 |
| SECTION IX .....                                     | 47 |
| REFERENCES .....                                     | 47 |
| REFERENCE FORM .....                                 | 48 |
| SUBCONTRACTOR REFERENCE FORM .....                   | 49 |
| EXHIBIT A .....                                      | 50 |
| STANDARD CONTRACT .....                              | 50 |

## SECTION I SUBMISSION COVER SHEET & CONFIGURATION SUMMARY

Provide the following information regarding the person responsible for the completion of your proposal. This person should also be the person the Mississippi Department of Information Technology Services, (ITS), should contact for questions and/or clarifications.

|         |       |         |       |
|---------|-------|---------|-------|
| Name    | _____ | Phone # | _____ |
| Address | _____ | Fax #   | _____ |
|         | _____ | E-mail  | _____ |

Subject to acceptance by **ITS**, the Vendor acknowledges that by submitting a proposal AND signing in the space indicated below, the Vendor is contractually obligated to comply with all items in this Request for Proposal (RFP), including the Standard Contract in Exhibit A if included herein, except those listed as exceptions on the Proposal Exception Summary Form. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. Vendors who sign below may not later take exception to any point during contract negotiations. The Vendor further certifies that the company represented here is an authorized dealer in good standing of the products/services included in this proposal.

\_\_\_\_\_/\_\_\_\_\_  
**Original signature** of Officer in Bind of Company/Date

Name (typed or  
printed)

Title

Company name

Physical address

State of Incorporation

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## CONFIGURATION SUMMARY

The Vendor must provide a summary of the main components of products/services offered in this proposal using 100 words or less.

## **PROPOSAL BONDS**

Please attach the proposal bond here.

## **SECTION II**

### **PROPOSAL SUBMISSION REQUIREMENTS**

The objective of the Proposal Submission Requirements section is to provide Vendors with the information required to submit a response to this Request for Proposal (RFP). A Vendor who has responded to previous RFPs issued by **ITS** should not assume that the requirements are the same, as changes may have been made.

1. Failure to follow any instruction within this RFP may, at the State's sole discretion, result in the disqualification of the Vendor's proposal.
2. The State has no obligation to locate or acknowledge any information in the Vendor's proposal that is not presented under the appropriate outline according to these instructions and in the proper location.
3. The Vendor's proposal must be received, in writing, by the office of **ITS** by the date and time specified. **ITS** is not responsible for any delays in delivery or expenses for the development or delivery of proposals. Any proposal received after proposal opening time will be returned unopened.
4. Proposals or alterations by fax, e-mail, or phone will not be accepted.
5. Original signatures are required on one copy of the Submission Cover Sheet and Configuration Summary, and the Vendor's original submission must be clearly identified as the original. The Vendor's original proposal must include the Proposal Bond, (if explicitly required in Section IV).
6. **ITS** reserves the right to reject any proposals, including those with exceptions, prior to and at any time during negotiations.
7. **ITS** reserves the right to waive any defect or irregularity in any proposal procedure.
8. The Vendor may intersperse their response following each RFP specification but must not otherwise alter or rekey any of the original text of this RFP. If the State determines that the Vendor has altered any language in the original RFP, the State may, in its sole discretion, disqualify the Vendor from further consideration. The RFP issued by **ITS** is the official version and will supersede any conflicting RFP language submitted by the Vendor.

The Vendor must conform to the following standards in the preparation of the Vendor's proposal:

- 8.1 The Vendor is required to submit one clearly marked original response and five (5) identical copy/copies of the complete proposal, including all sections and exhibits, in three-ring binders.

- 8.2 To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. A label containing the information on the RFP cover page must be clearly typed and affixed to the package in a clearly visible location.
  - 8.3 Number each page of the proposal.
  - 8.4 Respond to the sections and exhibits in the same order as this RFP.
  - 8.5 Label and tab the responses to each section and exhibit, using the corresponding headings from the RFP.
  - 8.6 If the Vendor does not agree with any item in any section, then the Vendor must list the item on the *Proposal Exception Summary Form*. (See Section V for additional instructions regarding Vendor exceptions.)
  - 8.7 Occasionally, an outline point in an attachment requests information which is not applicable to the products/services proposed. If the Vendor is certain the point does not apply to the given RFP, the Vendor should respond with "NOT APPLICABLE."
  - 8.8 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
  - 8.9 When an outline point/attachment is a statement provided for the Vendor's information only, the Vendor need only read that point. The Vendor acknowledges having read and accepting, or taking exception to, all sections by signing the *Submission Cover Sheet* and providing a *Proposal Exception Summary Form*.
  - 8.10 Where a minimum requirement has been identified, respond by stating the item (e.g., device name/model number, guaranteed response time) proposed and how it will meet the specifications.
  - 8.11 The Vendor must fully respond to each requirement within the *Technical Specifications* by fully describing the manner and degree by which the proposal meets or exceeds said requirements.
9. It is the responsibility of the Vendor to clearly identify all costs associated with any item or series of items in this RFP. The Vendor must include and complete all parts of the cost proposal in a clear and accurate manner. **Omissions, errors, misrepresentations, or inadequate details in the Vendor's cost proposal may be grounds for rejection of the Vendor's proposal. Costs that are not clearly identified will be borne by the Vendor.** The Vendor must complete the *Cost Information Submission* in this RFP, which outlines the minimum requirements for providing cost information. The Vendor should supply supporting details as described in the *Cost Information Submission*.

10. **ITS** reserves the right to request additional information or clarification of a Vendor's proposal. The Vendor's cooperation during the evaluation process in providing **ITS** staff with adequate responses to requests for clarification will be considered a factor in the evaluation of the Vendor's overall responsiveness. Lack of such cooperation or failure to provide the information in the manner required may, at the State's discretion, result in the disqualification of the Vendor's proposal.
11. Unsolicited clarifications and updates submitted after the deadline for proposals will be accepted or rejected at the sole discretion of **ITS**.
12. Unsolicited clarifications in the evaluation and selection of lowest and best proposal will be considered only if all the following conditions are met:
  - 12.1 A clarification to a proposal that includes a newly announced product line or service with equal or additional capability to be provided at or less than the proposed price will be considered.
  - 12.2 Information provided must be in effect nationally and have been formally and publicly announced through a news medium that the Vendor normally uses to convey customer information.
  - 12.3 Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.
  - 12.4 The Vendor must follow procedures outlined herein for submitting updates and clarifications.
  - 12.5 The Vendor must submit a statement outlining the circumstances for the clarification.
  - 12.6 The Vendor must submit one clearly marked original and five (5) copies of the clarification.
  - 12.7 The Vendor must be specific about which part of the original proposal is being changed by the clarification (i.e., must include exact RFP reference to section and outline point).
13. **Communications with State**

From the issue date of this RFP until a Vendor is selected and the selection is announced, responding Vendors or their representatives may not communicate, either orally or in writing regarding this RFP with any statewide elected official, state officer or employee, member of the legislature or legislative employee except as noted herein. To ensure equal treatment for each responding Vendor, all questions regarding this RFP must be submitted in writing to the State's contact person for the selection process, and not later than the last date for accepting responding Vendor questions provided in this RFP. All such questions will be answered officially by the State in writing. All such questions and

answers will become addenda to this RFP, and they will be posted to the ITS web site. Vendors failing to comply with this requirement will be subject to disqualification.

- 13.1 The State's contact person for the selection process is: Paula Conn, Technology Consultant, 301 North Lamar Street, Ste. 508, Jackson, MS 39201, 601-359-4411, Paula.Conn@its.ms.gov.
- 13.2 Vendor may consult with State representatives as designated by the State's contact person identified in 13.1 above in response to State-initiated inquiries. Vendor may consult with State representatives during scheduled oral presentations and demonstrations excluding site visits.

## **SECTION III VENDOR INFORMATION**

The objective of the Vendor Information section of this RFP is to provide Vendors with information required to respond to the RFP successfully.

1. **Interchangeable Designations**

The terms “Vendor” and “Contractor” are referenced throughout this RFP. Generally, references to the “Vendor” are used in conjunction with the proposing organization and procurement process leading up to the final RFP selection and award. The term “Contractor” denotes the role assumed, post-award, by the winning Vendor. Additionally, the terms “State of Mississippi,” “State” or “ITS” may be used interchangeably throughout this RFP to denote the political entity issuing the RFP and requesting responses from Vendors throughout these specifications. References to a specific agency, institution or other political entity represent the client or customer on whose behalf ITS is issuing the RFP.

2. **Vendor’s Responsibility to Examine RFP**

Vendors must examine all documents, forms, specifications, standard provisions, and instructions.

3. **Proposal as Property of State**

All written proposal material becomes the property of the State of Mississippi.

4. **Written Amendment to RFP**

Any interpretation of an ITS RFP will be made by written amendment only. The State will not be responsible for any other explanation of this RFP. A copy of any amendment will be posted on the ITS website, together with the associated RFP specification. Vendors are required to check the ITS website periodically for RFP amendments before the proposal opening date at: [http://www.its.ms.gov/rfps/rfps\\_awaiting.shtml](http://www.its.ms.gov/rfps/rfps_awaiting.shtml).

Any and all amendments will be posted no later than noon, seven days prior to the proposal opening date listed on the cover page of this RFP. Should you be unable to access the ITS website, you may contact the ITS technology consultant listed on page one of this RFP and request a copy.

5. **Oral Communications Not Binding**

Only transactions which are in writing from ITS may be considered official. No negotiations, decisions, or actions shall be executed by any Vendor as a result of any discussions with any State employee.

6. **Vendor’s Responsibility for Delivery**

Vendors must ensure, through reasonable and sufficient follow-up, proper compliance with, and fulfillment of all schedules and deliverables specified within the body of this RFP. The State will not be responsible for the failure of any delivery medium for

submission of information to or from the Vendor, including but not limited to, public and private carriers, U.S. mail, Internet Service Providers, facsimile, or e-mail.

7. **Evaluation Criteria**

The State's intent in issuing this RFP is to award a contract to the lowest and best responsive Vendor who meets specifications, considering price and other factors. The Vendor's past performance, cooperation, and ability to provide service and training are general factors that will be weighed in the selection process. More specific information concerning evaluation criteria is presented in *Technical Specifications*.

8. **Multiple Awards**

ITS reserves the right to make multiple awards.

9. **Right to Award in Whole or Part**

ITS reserves the right to approve an award by individual items or in total, whichever is deemed to be in the best interest of the State of Mississippi.

10. **Right to Use Proposals in Future Projects**

The State reserves the right to evaluate the awarded proposal from this RFP, including all products and services proposed therein, along with the resulting contractual terms, for possible use in future projects if (a) it is deemed to be in the best interest of the State to do so; and (b) the Vendor is willing to extend a cost less than or equal to that specified in the awarded proposal and resulting contract. A decision concerning the utilization of a Vendor's proposal for future projects is solely at the discretion of the State and requires the agreement of the proposing Vendor. The State's decision to reuse an awarded proposal will be based upon such criteria as: (1) the customer's business requirements; (2) elapsed time since the award of the original project; and/or (3) research on changes in the Vendor, market, and technical environments since the initial award.

11. **Price Changes During Award or Renewal Period**

A price increase will not be accepted during the award period or the renewal period, unless stipulated in the contract. However, the State will always take advantage of price decreases.

12. **Right to Request Information**

The State reserves the right to request information relative to a Vendor's references and financial status and to visit a Vendor's facilities during normal working hours. The State also reserves the right to request a current financial statement, prepared and certified by an independent auditing firm, and reserves the right to require that Vendors document their financial ability to provide the products and services proposed up to the total dollar amount of the Vendor's cost proposal. The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, even if that customer is not included in the Vendor's list of references.

**13. Vendor Personnel**

For RFPs including professional services specifications, the Vendor will be required to provide and/or certify the following for each individual included in the Vendor's proposal:

- 13.1 A direct telephone number at which the individual may be contacted for a telephone interview. The State will pay toll charges in the continental United States. The Vendor must arrange a toll-free number for all other calls.
- 13.2 That, if onsite interviews are required, the individual can be at the specified location in Mississippi within the timeframe specified. All costs associated with onsite interviews will be the responsibility of the Vendor.
- 13.3 That the individual is proficient in spoken and written English;
- 13.4 That the individual is a U.S. citizen or that the individual meets and will maintain employment eligibility requirements in compliance with all INS regulations. The Vendor must provide evidence of identification and employment eligibility prior to the award of a contract that includes any personnel who are not U. S. citizens.
- 13.5 That the personnel assigned to a project will remain a part of the project throughout the duration of the contract as long as the personnel are employed by the Vendor, unless replaced by the Vendor at the request of the State. This requirement includes the responsibility for ensuring all non-citizens maintain current INS eligibility throughout the duration of the contract.

**14. Vendor Imposed Constraints**

The Vendor must specifically document what limitations, if any, exist in working with any other Contractor acting in the capacity of the State's business partner, subcontractor or agent who may be managing any present or future projects; performing quality assurance; integrating the Vendor's software; and/or providing web-hosting, hardware, networking or other processing services on the State's behalf. The project relationship may be based on roles as either equal peers; supervisory – subordinate; or subordinate – supervisory, as determined by the State. The State recognizes that the Vendor may have trade secrets, intellectual property and/or business relationships that may be subject to its corporate policies or agreements. The State must understand these issues in order to decide to what degree they may impact the State's ability to conduct business for this project. These considerations will be incorporated accordingly into the proposal evaluation and selection process. The understanding reached between the Vendor and the State with regard to this business relationship precludes the Vendor from imposing any subsequent limitations of this type in future project undertakings by the State.

**15. Best and Final Offer**

The State reserves the right to solicit Best and Final Offers (BAFOs) from Vendors, principally in situations in which proposal costs eclipse available funding or the State

believes none of the competing proposals presents a Best Value (lowest and best proposal) opportunity. Because of the time and expense incurred by both the Vendor community and the State, BAFOs are not routinely conducted. Vendors should offer their best pricing with the initial solicitation. Situations warranting solicitation of a BAFO will be considered an exceptional practice for any procurement. Vendors that remain in a competitive range within an evaluation may be requested to tender Best and Final Offers, at the sole discretion of the State. All such Vendors will be provided an equal opportunity to respond with a Best and Final Offer under a procedure to be defined by the State that encompasses the specific, refined needs of a project, as part of the BAFO solicitation. The State may re-evaluate and amend the original project specifications should it be deemed necessary in order to improve the opportunity for attaining Best Value scenarios from among the remaining competing Vendors. All BAFO proceedings will be uniformly conducted, in writing and subject to solicitation by the State and receipt from the Vendors under a precise schedule.

**16. Restriction on Advertising**

The Vendor must receive written approval from the State before advertising or referencing the award of the contract or the services being provided. The Vendor must agree not to refer to awards in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the State of Mississippi.

**17. Rights Reserved to Use Existing Product Contracts**

The State reserves the right on turnkey projects to secure certain products from other existing **ITS** contracts if it is in its best interest to do so. If this option is exercised, then the awarded Vendor must be willing to integrate the acquisition and implementation of such products within the schedule and system under contract.

**18. Additional Information to be Included**

In addition to answering each specification within this RFP, the Vendor must include complete product/service information, including product pictorials and technical/descriptive literature relative to any product/service offered with the proposal. Information submitted must be sufficiently detailed to substantiate that the products/services offered meet or exceed specifications.

**19. Valid Contract Required to Begin Work**

The successful Vendor should not commence any billable work until a valid contract has been executed. Any work done by the successful Vendor prior to the execution of the contract is done at the Vendor's sole risk. The State is under no obligation to pay for work done prior to the execution of a contract.

## SECTION IV LEGAL AND CONTRACTUAL INFORMATION

The objective of the *Legal and Contractual Information* section is to provide Vendors with information required to complete a contract or agreement with **ITS** successfully.

1. **Acknowledgment Precludes Later Exception**

By signing the *Submission Cover Sheet*, the Vendor is contractually obligated to comply with all items in this RFP, including the *Standard Contract* in Exhibit A if included herein, except those specifically listed as exceptions on the *Proposal Exception Summary Form*. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. Vendors who respond to this RFP by signing the *Submission Cover Sheet* may not later take exception to any item in the RFP during contract negotiations. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. No exceptions by subcontractors or separate terms and conditions will be entertained after the fact.

2. **Failure to Respond as Prescribed**

Failure to respond as described in Section II: *Proposal Submission Requirements* to any item in the sections and exhibits of this RFP, including the *Standard Contract* attached as Exhibit A, if applicable, shall contractually obligate the Vendor to comply with that item.

3. **Contract Documents**

**ITS** will be responsible for all document creation and editorial control over all contractual documentation related to each procurement project. The following documents will normally be included in all contracts between **ITS** and the Vendor:

- 3.1 The Proposal Exception Summary Form as accepted by **ITS**;
- 3.2 Contracts which have been signed by the Vendor and **ITS**;
- 3.3 **ITS'** Request for Proposal, including all addenda;
- 3.4 Official written correspondence from **ITS** to the Vendor;
- 3.5 Official written correspondence from the Vendor to **ITS** when clarifying the Vendor's proposal; and
- 3.6 The Vendor's proposal response to the **ITS** RFP.

4. **Order of Precedence**

When a conflict arises regarding contract intent due to conflicting statements in documents included in the contract, the order of precedence of each document is as listed above unless modification of order is negotiated and agreed upon by both **ITS** and the winning Vendor.

**5. Additional Contract Provisions**

The contract will also include such additional provisions, which are not inconsistent or incompatible with the material terms of this RFP, as may be agreed upon by the parties. All of the foregoing shall be in such form and substance as prescribed by the State.

**6. Contracting Agent by Law**

The Executive Director of **ITS** is, by law, the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of computer and telecommunications equipment, systems, software, and services (Section 25-53-1, et seq., of the Mississippi Code Annotated). **ITS** is issuing this RFP on behalf of the procuring agency or institution. **ITS** and the procuring agency or institution are sometimes collectively referred to within this RFP as "State."

**7. Mandatory Legal Provisions**

- 7.1 The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.
- 7.2 Any provisions disclaiming implied warranties shall be null and void. See Mississippi Code Annotated Sections 11-7-18 and 75-2-719(4). The Vendor shall not disclaim the implied warranties of merchantability and fitness for a particular purpose.
- 7.3 The Vendor shall have no limitation on liability for claims related to the following items:
  - 7.3.1 Infringement issues;
  - 7.3.2 Bodily injury;
  - 7.3.3 Death;
  - 7.3.4 Physical damage to tangible personal and/or real property; and/or
  - 7.3.5 The intentional and willful misconduct or negligent acts of the Vendor and/or Vendor's employees or subcontractors.
- 7.4 All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.
- 7.5 Any contract negotiated under this RFP will be governed by and construed according to the laws of the State of Mississippi. Venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.
- 7.6 Any contract negotiated under this RFP is cancelable in the event the funding authority does not appropriate funds. Notice requirements to Vendor cannot exceed sixty (60) days.

- 7.7 The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this contract with the Vendor, Vendor agents, subcontractors, or assignees.
- 7.8 The State will deliver payments to the Vendor within forty-five (45) days after receipt of invoice and receipt, inspection, and approval of Vendor's products/services. No late charges will exceed 1.5% per month on any unpaid balance from the expiration of said period until payment is delivered. See Section 31-7-305 of the Mississippi Code Annotated. Seller understands and agrees that Purchaser is exempt from the payment of taxes.
- 7.9 The State shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Vendor.

**8. Approved Contract**

- 8.1 Award of Contract - A contract is considered to be awarded to a proposer once the proposer's offering has been approved as lowest and best proposal through:
  - 8.1.1 Written notification made to proposers on **ITS** letterhead, or
  - 8.1.2 Notification posted to the **ITS** website for the project, or
  - 8.1.3 CP-1 authorization executed for the project, or
  - 8.1.4 The **ITS** Board's approval of same during an open session of the Board.
- 8.2 **ITS** statute specifies whether **ITS** Director approval or **ITS** Board approval is applicable for a given project, depending on the total lifecycle cost of the contract.
- 8.3 A contract is not deemed final until five (5) working days after either the award of contract or post procurement review, as stipulated in the **ITS** Protest Procedure and Policy. In the event of a valid protest, the State may, at its sole discretion, continue the procurement or stay the procurement in accordance with the **ITS** Protest Procedure and Policy. If the procurement is stayed, the contract is not deemed final until the protest is resolved.

**9. Contract Validity**

All contracts are valid only if signed by the Executive Director of **ITS**.

**10. Order of Contract Execution**

Vendors will be required to sign contracts and to initial all contract changes before the Executive Director of **ITS** signs.

**11. Availability of Funds**

All contracts are subject to availability of funds of the acquiring State entity and are contingent upon receipt by the winning Vendor of a purchase order from the acquiring State entity.

**12. CP-1 Requirement**

All purchase orders issued for goods and services acquired from the awarded Vendor under this RFP must be encoded by the Customer agency with a CP-1 approval number assigned by **ITS**. This requirement does not apply to acquisitions that by policy have been delegated to State entities.

**13. Requirement for Electronic Payment and Invoicing**

13.1 Payments to the awarded Vendor for all goods and services acquired under this RFP by state agencies that make payments through the Statewide Automated Accounting System (“SAAS”) will be made electronically, via deposit to the bank account of the Vendor’s choice. The awarded Vendor must enroll and be activated in PayMode™, the State’s current vehicle for sending and receiving electronic payments, prior to receiving any payments from state agencies. There is no charge for a Vendor to enroll or receive payments via PayMode. For additional information on PayMode, including registration instructions, Vendors should visit the following website: <http://portal.paymode.com/ms/>. Vendors may also request assistance from the Mississippi Management and Reporting System (MMRS) Call Center regarding PayMode registration by contacting [mash@dfa.state.ms.us](mailto:mash@dfa.state.ms.us).

13.2 For state agencies that make payments through SAAS, the awarded Vendor is required to submit electronically all invoices for goods and services acquired under this RFP, along with appropriate supporting documentation, as directed by the State. Should the requirement for electronic invoicing be implemented during the term of the project contract, the State will work with the Vendor to determine a reasonable timeframe for initiating electronic invoicing.

13.3 Items 13.1 and 13.2 only apply to state agencies that make payments through SAAS. Payments and invoices for all other entities will conform to their standard methods of payment to contractors.

**14. Time For Negotiations**

14.1 All contractual issues must be successfully negotiated within ten (10) working days from the Vendor’s initial receipt of the project contract from **ITS**, unless **ITS** consents to extend the period. Failure to complete negotiations within the stated time period constitutes grounds for rejection of the Vendor’s response to this RFP. **ITS** may withdraw the proposal award and begin negotiations with the next ranked Vendor immediately or pursue any other option.

- 14.2 Negotiations shall be limited to items to which the Vendor has noted as exceptions on their Proposal Exception Summary Form, as well as any new items that the State may require. All contract changes requested by the Vendor related to such exceptions noted in Vendor's proposal shall be submitted three (3) working days prior to scheduled negotiations, unless **ITS** consents to a different period.
15. **Prime Contractor**  
The selected Vendor will be designated the prime contractor in the proposal, and as such, shall be solely responsible for all products/services offered in the proposal and for the fulfillment of the contract with the State.
16. **Sole Point of Contact**  
**ITS** will consider the selected Vendor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.
- 16.1 The Vendor must acknowledge and agree that in matters of proposals, clarifications, negotiations, contracts and resolution of issues and/or disputes, the Vendor represents all contractors, third parties and/or subcontractors the Vendor has assembled for this project. The Vendor's commitments are binding on all such parties and consequently the State is only required to negotiate with the Vendor.
- 16.2 Furthermore, the Vendor acknowledges and agrees to pass all rights and/or services related to all general consulting, services leasing, software licensing, warranties, hardware maintenance and/or software support to the State from any contractor, third party or subcontractor without the State having to negotiate separately or individually with any such parties for these terms or conditions.
- 16.3 Should a proposing Vendor wish to assign payment of any or all charges resulting from this contract to a third party, Vendor must disclose that fact in his/her proposal, along with the third party's name, address, nature of business, and relationship to the proposing Vendor, the reason for and purpose of the assignment, and all conditions of the assignment, including but not limited to a copy of an assignment document to be executed by the State, the Vendor, and the third party. Such assignments will be accepted or rejected at the sole discretion of the State. Vendor must clearly and definitively state in his/her proposal whether the proposal is contingent upon the requested assignment of payments. Whenever any assignment of payment is requested, the proposal, contract, and assignment document must include language specifically guaranteeing that the proposing Vendor is solely and fully liable and responsible for the performance of its obligations under the subject contract. No assignment of payment will be considered at the time of purchase unless such assignment was fully disclosed in the Vendor's proposal and subsequently accepted by the State.
17. **ITS Approval of Subcontractor Required**

Unless provided in the contract, the Vendor shall not contract with any other party for furnishing any of the contracted work or services without the consent, guidance, and written approval of the State. **ITS** reserves the right of refusal and the right to request replacement of a subcontractor due to unacceptable work or conduct. This provision should not be interpreted as requiring the approval of individual contracts of employment between the Vendor and personnel assigned for services under the contract.

**18. Inclusion of Subcontract Agreements**

Copies of any agreements to be executed between the Vendor and any subcontractors must be included in the Vendor's proposal.

**19. Negotiations with Subcontractor**

In order to protect the State's interest, **ITS** reserves the right to attempt to resolve the contractual disagreements that may arise between the Vendor and its subcontractor after award of the contract.

**20. References to Vendor to Include Subcontractor**

All references in the RFP to "Vendor" shall be construed to encompass both the Vendor and its subcontractors.

**21. Outstanding Vendor Obligations**

21.1 Any Vendor who presently owes the State of Mississippi money pursuant to any contract for which **ITS** is the contracting agent and who has received written notification from **ITS** regarding the monies owed, must submit, with the proposal, a certified check in the amount due and owing in order for the proposal in response to this RFP to be considered. For a Vendor currently in bankruptcy as of the RFP submission date, this requirement is met, if and only if, **ITS** has an active petition before the appropriate bankruptcy court for recovery of the full dollar amount presently owed to the State of Mississippi by that Vendor. If the Vendor has emerged from bankruptcy by the RFP submission date, the Vendor must pay in full any amount due and owing to the State, as directed in the court-approved reorganization plan, prior to any proposal being considered.

21.2 Any Vendor who is presently in default on existing contracts for which **ITS** is the contracting agent, or who otherwise is delinquent in the performance of any such contracted obligations, is in the sole judgment of the State required to make arrangement for fulfilling outstanding obligations to the satisfaction of the State in order for the proposal to be considered.

21.3 The State, at its sole discretion, may reject the proposal of a Vendor with any significant outstanding financial or other obligations to the State or who is in bankruptcy at the time of proposal submission.

**22. Equipment Condition**

For all RFPs requiring equipment, the Vendor must furnish only new equipment in response to **ITS** specifications, unless an explicit requirement for used equipment is otherwise specified.

23. **Delivery Intervals**

The Vendor's proposal must specify, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, delivery and installation intervals after receipt of order.

24. **Pricing Guarantee**

The Vendor must explicitly state, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, how long the proposal will remain valid. Unless stated to the contrary in the *Technical Specifications*, pricing must be guaranteed for a minimum of ninety (90) days.

25. **Shipping Charges**

For all RFPs requiring shipment of any product or component, all products must be delivered FOB destination to any location within the geographic boundaries of the State with all transportation charges prepaid and included in the RFP proposal or LOC quotation. Destination is the point of use.

26. **Amortization Schedule**

For all RFPs requiring equipment, contracts involving the payment of interest must include an amortization schedule clearly documenting the amount of interest payable over the term of the contract.

27. **Americans with Disabilities Act Compliance for Web Development and Portal Related Services**

All Web and Portal development work must be designed and implemented in compliance with the Electronic and Information Technology Accessibility Standards associated with Section 508 of the Rehabilitation Act and with the Web Accessibility Initiative (WAI) of the W3C.

28. **Ownership of Developed Software**

28.1 When specifications require the Vendor to develop software for the State, the Vendor must acknowledge and agree that the State is the sole owner of such developed software with exclusive rights to use, alter, or distribute the software without restriction. This requirement applies to source code, object code, and documentation.

28.2 The State may be willing to grant the Vendor a nonexclusive license to use the State's software subject to devising acceptable terms and license fees. This requirement is a matter of State Law, and not negotiable.

29. **Ownership of Custom Tailored Software**

In installations where the Vendor's intellectual property is modified and custom-tailored to meet the needs of the State, the Vendor must offer the State an application license entitling the State to use, and/or alter the software without restriction. These requirements apply to source code, object code and documentation.

30. **Terms of Software License**

The Vendor acknowledges and agrees that the term of all software licenses provided to the State shall be perpetual unless stated otherwise in the Vendor's proposal.

31. **The State is Licensee of Record**

The Vendor must not bypass the software contracting phase of a project by licensing project software intended for State use in its company name. Upon award of a project, the Vendor must ensure that the State is properly licensed for all software that is proposed for use in a project.

32. **Remote Access via Virtual Private Network**

Vendor must understand that the State of Mississippi's Enterprise Security Policy mandates that all remote access to and/or from the State network must be accomplished via a Virtual Private Network (VPN). If remote access is required at any time during the life of this Agreement, Vendor and the State agree to implement/maintain a VPN for this connectivity. This required VPN must be IPSec-capable (ESP tunnel mode) and will terminate on a Cisco VPN-capable device (i.e. VPN concentrator, PIX firewall, etc.) on the State's premises. Vendor agrees that it must, at its expense, implement/maintain a compatible hardware/software solution to terminate the specified VPN on the State's premises. The parties further understand and agree that the State protocol standard and architecture are based on industry-standard security protocols and manufacturer engaged at the time of contract execution. The State reserves the right to introduce a new protocol and architecture standard and require the Vendor to comply with same, in the event the industry introduces a more secure, robust protocol to replace IPSec/ESP and/or there is a change in the manufacturer engaged.

33. **Negotiating with Next-Ranked Vendor**

Should the State cease doing business with any Vendor selected via this RFP process, for any reason, the State reserves the right to initiate negotiations with the next ranked Vendor.

34. **Disclosure of Proposal Information**

Vendors should be aware that any information in a proposal may be subject to disclosure or reproduction under the Mississippi Public Records Act of 1983, defined in Section 25-61-1 et seq. of the Mississippi Code Annotated. All disclosures of proposal information will be made in compliance with the ITS Public Records Procedures established in accordance with the Mississippi Public Records Act. The ITS Public Records Procedures are available in Section 019-010 of the ITS Procurement Handbook, on the ITS Internet site at: <http://dsitspe01.its.ms.gov/its/procman.nsf/TOC4?OpenView> or from ITS upon request.

As outlined in the Third Party Information section of the **ITS** Public Records Procedures, **ITS** will give written notice to any affected Vendor of a request to view or reproduce the Vendor's proposal or portion thereof. **ITS** will not, however, give such notice with respect to summary information prepared in connection with the State's review or evaluation of a Vendor's proposal, including, but not limited to, written presentations to the **ITS** Board or other approving bodies, and/or similar written documentation prepared for the project file. In addition, **ITS** will not provide third-party notice for requests for any contract executed as a result of this RFP, with the exception of information contained in contract exhibits identified and labeled as confidential during the contract negotiation process. **ITS** will provide third-party notice of requests for any such confidential exhibits to allow Vendor the opportunity to protect the information by court order as outlined in the **ITS** Public Records Procedures.

Summary information and contract terms, as defined above, become the property of **ITS**, who has the right to reproduce or distribute this information without notification.

Vendors should further be aware that requests for disclosure of proposal and contract information are sometimes received by **ITS** significantly after the proposal opening date. **ITS** will notify the signatory "Officer in Bind of Company" provided in Section I of this RFP for Notification of Public Records Requests in the event information is requested that your company might wish to consider protecting as a trade secret or as confidential commercial or financial information. If the "Officer in Bind of Company" should not be used for notification of public records requests, Vendor should provide the alternative contact information in response to this RFP item.

**35. Risk Factors to be Assessed**

The State will assess risk factors that may initially exist within a given procurement and that may develop over the course of a procurement process as facts become known. The State, at its sole discretion, may employ the following mechanisms in mitigating these risks: proposal bonding, performance bonding, progress payment plan with retainage, inclusion of liquidated damages, and withholding payment for all portions of the products/services acquired until final acceptance. The Vendor must agree to incorporate any or all of the above terms and conditions into the customer agreement.

**36. Proposal Bond**

The Vendor must include a proposal bond in the amount of \$10,000.00 with its RFP proposal. Vendor is specifically disallowed from taking exception to the proposal bond requirement. Proposals without proposal bonds will be rejected.

The security must be in the form of a bond, irrevocable letter of credit, certified check, or cashier's check (hereinafter, "security") payable to the Mississippi Department of Information Technology Services, to be held by their contracting agent, the Mississippi Department of Information Technology Services, and must be placed in the front of the Vendor's proposal. The submission of an acceptable security is a condition precedent to a valid proposal, and the amount of the security is not negotiable or contestable. Any

proposal received without the security will be rejected and returned to the Vendor without further consideration.

The security binds the Vendor to the commitments made in writing in the Vendor's proposal. The security will be forfeited in the event the awarded Vendor, at any time during the contract negotiation process, refuses to honor commitments made in its proposal, reneges on pricing, takes exception to any term or condition that was not addressed in the Vendor's written proposal, or fails to execute a contract as anticipated in the RFP and the Vendor's proposal, including documented exceptions, within fifteen (15) working days after the Vendor's initial receipt of the project contract from ITS, unless an extension is agreed to by ITS.

As stated in the RFP, the Vendor may take exception to any point without incurring any liability to provide items to which an exception has been taken. Likewise, the State has no obligation to accept any proposed exception. Should the State decide, at its sole discretion and at any point in the process, that an exception is NOT acceptable, ITS will reject the Vendor's proposal and return the Vendor's security.

The Vendor's security will be returned promptly after ITS and the successful Vendor have executed a contract or within ninety (90) days after opening the proposals if no letter of intent to award a contract has been sent. In the event that the successful Vendor fails to accept and sign the mutually negotiated contract, that Vendor shall be disqualified and ITS shall initiate negotiations with the next ranked Vendor until a contract is successfully negotiated, or ITS elects to cancel the procurement. The securities of all remaining Vendors will be returned when a contract has been successfully negotiated and executed, or when the procurement is canceled.

37. **Performance Bond/Irrevocable Bank Letter of Credit**

The Vendor is not required to include the price of a performance bond or irrevocable bank letter of credit with his RFP proposal. If required, the cost of the bond or letter of credit must be shown as a separate line item in the *Cost Information Submission*. The performance bond or letter of credit must be procured at the Vendor's expense prior to the execution of the contract and may be invoiced to Mississippi Department of Information Technology Services after contract initiation only if itemized in the *Cost Information Submission* and in the executed contract. **The final decision as to the requirement for a Performance Bond or Irrevocable Bank Letter of Credit will be made upon contract award and is at the State's sole discretion.**

If a Performance Bond /Irrevocable Bank Letter of Credit is required, the Vendor must procure and submit to ITS, on behalf of Mississippi Department of Information Technology Services, with the executed contract, (a) a performance bond from a reliable surety company authorized to do business in the State of Mississippi or (b) an irrevocable bank letter of credit that is acceptable to the State. The Performance Bond or the Irrevocable Letter of Credit shall be for the total amount of the contract or an amount mutually agreed upon by the State and the successful Vendor and shall be payable to Mississippi Department of Information Technology Services, to be held by their

contracting agent, the Mississippi Department of Information Technology Services. No contract resulting from this RFP will be valid until the required Performance Bond or Irrevocable Bank Letter of Credit has been received and found to be in proper form and amount. The Vendor agrees that the State has the right to request payment for a partial amount or the full amount of the Irrevocable Letter of Credit/Performance bond should the products/services being procured hereunder not be provided in a manner consistent with this RFP and the Vendor's proposal by the delivery dates agreed upon by the parties. The State may demand payment by contacting the bank issuing the letter of credit or the bonding company issuing the performance bond and making a written request for full or partial payment. The issuing bank/bonding company is required to honor any demand for payment from the State within fifteen (15) days of notification. The letter of credit/performance bond shall cover the entire contract period, with the exception of post-warranty maintenance and support, and shall not be released until final acceptance of all products and deliverables required herein or until the warranty period, if any, has expired, whichever occurs last. If applicable, and at the State's sole discretion, the State may, at any time during the warranty period, review Vendor's performance and performance of the products/services delivered and determine that the letter of credit/performance bond may be reduced or released prior to expiration of the full warranty period.

**38. Responsibility for Behavior of Vendor Employees/Subcontractors**

The Vendor will be responsible for the behavior of all its employees and subcontractors while on the premises of any State agency or institution. Any Vendor employee or subcontractor acting in a manner determined by the administration of any State agency or institution to be detrimental, abusive, or offensive to any of the staff or student body of any State agency or institution will be asked to leave the premises and can be suspended from further work on the premises.

**39. Protests**

The Executive Director of **ITS** and/or the Board Members of **ITS** or their designees shall have the authority to resolve Vendor protests in connection with the selection for award of a contract. Copies of the protest procedures are available on the **ITS** Internet site - **ITS** Protest Procedure and Policy, Section 019-020, **ITS** Procurement Handbook at: <http://dsitspe01.its.ms.gov/its/procman.nsf/TOC4?OpenView> or from **ITS** upon request.

**40. Protest Bond**

Potential Vendors may protest any of the specifications of this RFP on the belief that the specification is unlawful, unduly restrictive, or unjustifiably restraining to competition. Any such protest must be in writing and submitted to the **ITS** Executive Director along with the appropriate protest bond within five (5) working days of the Official Release of the RFP, as defined in the **ITS** Protest Procedure and Policy. The outside of the envelope must be marked "Protest" and must specify RFP number 3627.

As a condition precedent to filing any protest related to this procurement, the Vendor must procure, submit to the **ITS** Executive Director with its written protest, and maintain in effect at all times during the course of the protest or appeal thereof, a protest bond in

the full amount of the total estimated project lifecycle cost or \$250,000.00, whichever is less. The total estimated project lifecycle cost will be the amount used by **ITS** in the computation of cost points, as the low cost in the denominator of the cost evaluation formula. The bond shall be accompanied by a duly authenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the protest bond and shall identify a contact person to be notified in the event that the State is required to take action against the bond. The protest bond shall not be released to the protesting Vendor until the protest is finally resolved and the time for appealing said protest has expired. The protest bond shall be procured at the protesting Vendor's expense and be payable to the Mississippi Department of Information Technology Services. Prior to approval of the protest bond, **ITS** reserves the right to review the protest bond and require the protesting Vendor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by the protesting Vendor. The State may claim against the protest bond as specified in Section 25-53-5 (n) of the Mississippi Code of 1972, as amended during the 1998 Mississippi legislative session, in addition to all other rights and remedies the State may have at law or in equity.

Should the written protest submitted by the Vendor fail to comply with the content requirements of **ITS'** protest procedure and policy, fail to be submitted within the prescribed time limits, or fail to have the appropriate protest bond accompany it, the protest will be summarily dismissed by the **ITS** Executive Director.

**41. Mississippi Employment Protection Act**

Effective July 1, 2008, Vendor acknowledges that if awarded, it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Vendor will agree to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State.

Vendor acknowledges and certifies that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi.

Vendor acknowledges that violating the E-Verify Program (or successor thereto) requirements subjects Vendor to the following: (a) cancellation of any state or public contract and ineligibility for any state or public contract for up to three (3) years, with notice of such cancellation being made public, or (b) the loss of any license, permit,

certification or other document granted to Vendor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. Vendor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

## SECTION V PROPOSAL EXCEPTIONS

Please return the *Proposal Exception Summary Form* at the end of this section with all exceptions to items in any Section of this RFP listed and clearly explained or state “No Exceptions Taken.” If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions to any item in this RFP document.

1. Unless specifically disallowed on any specification herein, the Vendor may take exception to any point within this RFP, including a specification denoted with “shall” or “must,” as long as the following are true:
  - 1.1 The specification is not a matter of State law;
  - 1.2 The proposal still meets the intent of the RFP;
  - 1.3 A *Proposal Exception Summary Form* is included with Vendor’s proposal; and
  - 1.4 The exception is clearly explained, along with any alternative or substitution the Vendor proposes to address the intent of the specification, on the *Proposal Exception Summary Form*.
2. The Vendor has no liability to provide items to which an exception has been taken. **ITS** has no obligation to accept any exception. During the proposal evaluation and/or contract negotiation process, the Vendor and **ITS** will discuss each exception and take one of the following actions:
  - 2.1 The Vendor will withdraw the exception and meet the specification in the manner prescribed;
  - 2.2 **ITS** will determine that the exception neither poses significant risk to the project nor undermines the intent of the RFP and will accept the exception;
  - 2.3 **ITS** and the Vendor will agree on compromise language dealing with the exception and will insert same into the contract; or
  - 2.4 None of the above actions is possible, and **ITS** either disqualifies the Vendor’s proposal or withdraws the award and proceeds to the next ranked Vendor.
3. Should **ITS** and the Vendor reach a successful agreement, **ITS** will sign adjacent to each exception which is being accepted or submit a formal written response to the *Proposal Exception Summary* responding to each of the Vendor’s exceptions. The *Proposal Exception Summary*, with those exceptions approved by **ITS**, will become a part of any contract on acquisitions made under this RFP.
4. An exception will be accepted or rejected at the sole discretion of the State.

5. The State desires to award this RFP to a Vendor or Vendors with whom there is a high probability of establishing a mutually agreeable contract, substantially within the standard terms and conditions of the State's RFP, including the *Standard Contract* in Exhibit A, if included herein. As such, Vendors whose proposals, in the sole opinion of the State, reflect a substantial number of material exceptions to this RFP, may place themselves at a comparative disadvantage in the evaluation process or risk disqualification of their proposals.
6. For Vendors who have successfully negotiated a contract with **ITS** in the past, **ITS** requests that, prior to taking any exceptions to this RFP, the individual(s) preparing this proposal first confer with other individuals who have previously submitted proposals to **ITS** or participated in contract negotiations with **ITS** on behalf of their company, to ensure the Vendor is consistent in the items to which it takes exception.

### PROPOSAL EXCEPTION SUMMARY FORM

**List and clearly explain any exceptions, for all RFP Sections and Exhibits, in the table below.**

| <b>ITS RFP Reference</b>                                       | <b>Vendor Proposal Reference</b>   | <b>Brief Explanation of Exception</b>       | <b>ITS Acceptance (sign here only if accepted)</b> |
|--|--|---|--|
| (Reference specific outline point to which exception is taken) | (Page, section, items in Vendor's proposal where exception is explained) | (Short description of exception being made) |  |
| 1.   |  |   |  |
| 2.   |  |   |  |
| 3.   |  |   |  |
| 4.   |  |   |  |
| 5.   |  |   |  |
| 6.   |  |   |  |
| 7.   |  |   |  |

## SECTION VI RFP QUESTIONNAIRE

Please answer each question or provide the information as requested in this section.

1. **Statewide Automated Accounting System (SAAS) Information for State of Mississippi Vendor File**

- 1.1 **SAAS Vendor Code:** Any Vendor who has not previously done business with the State and has not been assigned a SAAS Vendor code should furnish a signed copy of an IRS W-9 form with the proposal. A copy of the W-9 Form can be obtained by going to the ITS website, <http://www.its.ms.gov>, clicking on the "Procurement" button to the left of the screen, selecting "Vendor Information", scrolling to the bottom of the page, and clicking on the link "Forms Required in RFP Responses." Vendors who have previously done business with the State should furnish ITS with their SAAS Vendor code.

SAAS Vendor Code: \_\_\_\_\_ OR Signed W-9 Form Attached: \_\_\_\_\_

- 1.2 **Vendor Self-Certification Form:** The State of Mississippi, in an effort to capture participation by minority Vendors, asks that each Vendor review the State of Mississippi Minority Vendor Self Certification Form. This information is for tracking/reporting purposes only, and will not be used in determining which Vendor will be chosen for the project. Any Vendor who can claim status as a Minority Business Enterprise or a Woman Business Enterprise in accordance with the definitions on this form and who has not previously submitted a form to the State of Mississippi should submit the completed form with the proposal. A copy of the Minority Vendor Self-Certification Form can be obtained at: [http://www.mississippi.org/assets/docs/minority/minority\\_vendor\\_selfcertform.pdf](http://www.mississippi.org/assets/docs/minority/minority_vendor_selfcertform.pdf). Please direct any questions about minority certification in Mississippi to the Minority Business Enterprise Division of the Mississippi Development Authority by telephone at (601) 359-3448 or via email at [minority@mississippi.org](mailto:minority@mississippi.org).

Minority Vendor Self-Certification Form Included: \_\_\_\_\_  
Minority Vendor Self-Certification Form Previously Submitted: \_\_\_\_\_  
Not claiming Minority or Women Business Enterprise Status: \_\_\_\_\_

2. **Certification of Authority to Sell**

The Vendor must certify Vendor is a seller in good standing, authorized to sell and able to deliver all items and related services proposed in the State of Mississippi in the time frame specified. Does the Vendor make these certifications? (A yes or no answer is required.)



Remit Address (if different):

|  |
|--|
|  |
|--|

7. **Web Amendments**

As stated in Section III, **ITS** will use the **ITS** website to post amendments regarding RFPs before the proposal opening at [http://www.its.ms.gov/rfps/rfps\\_awaiting.shtml](http://www.its.ms.gov/rfps/rfps_awaiting.shtml). We will post clarifications until noon seven days prior to the proposal opening date listed on the cover page of this RFP or the posted extension date, if applicable.

Vendors may list any questions or items needing clarification discovered in the week prior to the proposal opening in a written format at the beginning of the proposal binder or in the comment section for the individual offering.

Does the Vendor certify that they have reviewed a copy of the **ITS** amendments for RFPs as above stated? (A yes or no answer is required.)

## **SECTION VII TECHNICAL SPECIFICATIONS**

### **1. How to Respond to this Section**

- 1.1 Beginning with Item 2.1 of this section, label and respond to each outline point in this section as it is labeled in the RFP.
- 1.2 The Vendor must respond with “ACKNOWLEDGED,” “WILL COMPLY” or “AGREED” to each point in this section. In addition, many items in this RFP require detailed and specific responses to provide the requested information. Failure to provide the information requested will result in the Vendor receiving a lower score for that item, or, at the State’s sole discretion, being subject to disqualification.
- 1.3 “ACKNOWLEDGED” should be used when no vendor response or vendor compliance is required. “ACKNOWLEDGED” simply means the vendor is confirming to the State that he read the statement. This is commonly used in the RFP sections where the agency’s current operating environment is described or where general information is being given about the project.
- 1.4 “WILL COMPLY” or “AGREED” are used interchangeably to indicate that the vendor will adhere to the requirement. These terms are used to respond to statements that specify that a vendor or vendor’s proposed solution must comply with a specific item or must perform a certain task.
- 1.5 If the Vendor cannot respond with “ACKNOWLEDGED,” “WILL COMPLY,” or “AGREED,” then the Vendor must respond with “EXCEPTION.” (See Section V, for additional instructions regarding Vendor exceptions.)
- 1.6 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
- 1.7 In addition to the above, Vendor must provide explicit details as to the manner and degree to which the proposal meets or exceeds each specification.

### **2. General Overview and Background**

- 2.1 The Mississippi Department of Information Technology Services (ITS) Data Services Division is requesting SAN and Ethernet network components and services necessary to implement a robust, expandable, resilient, and converged Fiber Channel over Ethernet-capable (FCoE) network for a new data center. The requested configuration will facilitate connectivity to enterprise storage subsystems such as an IBM DS8300 and to the State’s campus area and wide area networks.

- 2.2 ITS will be relocated to a new facility at 3775 Eastwood Drive in Jackson, Mississippi. This building, currently under construction by the Department of Finance and Administration's Bureau of Building, Grounds, and Real Property Management (BOB), will be occupied by ITS during calendar year 2010. Incorporated into the new facility is a hardened data center with the potential of substantial growth. The new data center will, as much as possible, utilize server, storage, and network virtualization to facilitate growth and to manage the cost of hardware, software, and data center environmental resources.
- 2.3 Currently, disk storage at ITS is comprised of an IBM ESS 800, IBM DS8300, an IBM DS4000, an STK (Sun) FlexLine FLX380, a Sun 6140, an STK (Sun) FlexLine FLX210, and an IBM NAS N5300. All disk storage, with the exception of z/OS storage, are connected to SAN fabrics facilitated with a MCDATA Intrepid 6140 (64-port) SAN Director, two 24-port McDATA Sphereon switches, and one 24-port IBM 2498-B24 configured into three distinct fabrics. At this time, approximately 70% of the ports are populated.
- 2.4 The storage environment at the new facility will be re-engineered. The IBM DS8300, the STK (Sun) FLX380, and the Sun 6140 will be retained and moved. A second DS 8300 will be added for not only z/OS storage, but also open systems storage. However, some open systems data will be moved to a yet-to-be-determined storage platform. Some of the old storage may be retained for disaster recovery purposes.
- 2.5 The present Ethernet network is comprised of a Cisco Catalyst 4506 (96-port), a Cisco Catalyst 3500, and various small switches. Some servers are connected to a DMZ. Other servers are connected directly to a Cisco 6500 in the State's core network while all other switches collapse into the core network.
- 2.6 ITS will implement a well-planned SAN and Ethernet network for the new data center facility that can be easily expanded as needed. The SAN infrastructure in the new data center will have to temporarily, and possibly permanently, extend to the current data center for migration and/or disaster recovery purposes.
- 2.7 ITS intends to have 10Gbps capability in the new data center and would like to implement Fiber Channel over Ethernet (FCoE) initially for some servers in the new center. The Ethernet network will be extended from the current center to the new data center.
- 2.8 The State has a fiber network ring from the current data center to the new center with dark fiber available as needed. Estimated distance is in the six mile range. (Refer to item 10.7 for optional equipment requirements.)
- 2.9 The converged data center network will collapse back into the State Cisco-based core network. The core campus network and wide area network equipment is not

part of the RFP 3627 (acquisition); internal data center infrastructure is the target environment.

### 3. Procurement Project Schedule

| <b>Task</b>  | <b>Date</b>  |
|--|--|
| First Advertisement Date for RFP                           | 03/16/10   |
| Second Advertisement Date for RFP                          | 03/23/10   |
| Deadline for Vendor's Written Questions                    | 3:00 p.m. Central Time on 03/30/10                 |
| Deadline for Questions Answered and Posted to ITS Web Site | 04/06/10   |
| Open Proposals   | 04/13/10   |
| Evaluation of Proposals                                    | 04/13/10—04/27/10                                  |
| Contract Negotiation                                       | 4/28/10—05/12/10                                   |
| Proposed Project Installation Start-up                     | Within 45 days of notification to proceed          |
| Acceptance Testing   | 10 day period begins at completion of installation |

### 4. Technical Requirements

- 4.1 If any component(s) necessary for operation of the requested system is omitted from Vendor's proposal, Vendor must be willing to provide the component(s) at no additional cost. This includes, but is not limited to, all connectors, raceway, etc. necessary to render the configuration fully operational.
- 4.2 The Vendor will propose SAN switches or directors, FCoE capable switches, top of rack solutions, general Ethernet switches and services to implement the SAN/Ethernet network at the new data center.
- 4.3 Initially, ITS will be moving or installing the following types and numbers of servers and storage devices in the two-floor data center. Proposal should offer a solution to address these initial requirements:
  - 4.3.1 First Floor
    - 4.3.1.1 Five IBM System p5 550Q running AIX 5.3 and AIX 6.1, supporting IBM WebSphere and DB2;
    - 4.3.1.2 Two IBM System p7 750 running AIX 6.1 and supporting IBM WebSphere, DB2, and Tivoli Access Manager;

- 4.3.1.3 Two IBM BladeCenter Blade Centers with McData Fiber Channel Switches and HS21 Blades running Linux and Windows, supporting Microsoft SQL and e-mail services;
- 4.3.1.4 Twelve IBM xSeries 3850 running VMware hosting Windows and Linux, supporting GIS, Microsoft SQL, Lotus Domino, Document Management (these servers will use FCoE);
- 4.3.1.5 One IBM N5200 NAS Gateway;
- 4.3.1.6 Two IBM System z9 BC running z/VM and Linux (SLES10 SP2) using FCP implemented over FICON channels;
- 4.3.1.7 Three Sun SPARC systems running Solaris for e-mail and mail relays;
- 4.3.1.8 Two IBM System z9 BC running z/OS (no SAN connection) with OSA Express2 GbE LX and OSA Express2 1000BASE;
- 4.3.1.9 Ten various Windows platforms for special purpose use;
- 4.3.1.10 One IBM DS8300 (20TB of z/OS storage and 20 TB open storage);
- 4.3.1.11 One undetermined 60TB storage subsystem for open systems;
- 4.3.1.12 One STK FlexLine 380 (30TB);
- 4.3.1.13 One IBM TS3500 (possible SAN connected tape drives); and
- 4.3.1.14 One IBM TS7740 (no SAN connectivity required).

4.3.2 Second Floor

- 4.3.2.1 Four IBM System P5 550Q running AIX 5.2 and supporting IBM WebSphere and DB2;
- 4.3.2.2 Three IBM xSeries running Windows;
- 4.3.2.3 Four SunFire systems running Solaris for e-mail; and
- 4.3.2.4 Ten various Windows platforms for special purpose use.

- 4.4 Solutions are vendor specific as it pertains to top of rack solutions, SAN switches and directors, etc. Therefore, ITS will not dictate configuration. An integrator may use multiple equipment brands as dictated by the requirements, but all components of the solution must be enterprise class equipment.

- 4.5 Vendors should assume that within three years of occupying the new facility the infrastructure will double in capacity on the first floor and that the second floor may be used by multiple agencies with varying requirements. Vendors are required to offer a three year solution based on these assumptions.
  - 4.5.1 Vendor is required to submit not-to-exceed costs for equipment to scale the solution past the initial proposal over the next three years. Vendor must list any configuration components that will be at capacity (“maxed out”) and detail costs for adding each new piece of equipment. The cost of the initial configuration and the cost of the three year configuration will be evaluated separately.
  - 4.5.2 Ports available per blade/module and blades/modules that can be added to proposed equipment must be detailed so that scalability of proposal can be determined. The impact of added components on throughput must be stated.
- 4.6 The Vendor should assume that any additional equipment on the second floor will utilize the Ethernet network but will not utilize the Data Center SAN.
- 4.7 The Vendor is required to propose FCoE capability, initially for the VMware servers (IBM 3850) and capacity to expand as other FCoE-capable servers are added.
- 4.8 The Vendor is required to provide 10GB Ethernet within the data center and 10GB uplink(s) to the core network in addition to 10/100/1000 connectivity to servers.
- 4.9 The Vendor is required to provide capacity for dual HBAs and dual 10/100/1000 Ethernet adapters in all open services, excluding the CNA requirement for VMware servers.
- 4.10 The Vendor is required to provide capacity for four 2-port OSA Express2 GbE LX and four 2-port OSA Express2 1000BASE connections for each mainframes.
- 4.11 The IBM DS8300s have eight 4GB fiber adapters; the proposed open systems storage will have, at minimum, sixteen 4GB fiber adapters. The proposal must address SAN connectivity for storage. State whether 8GB and 16GB FC connectivity is available.
- 4.12 The proposed solution is required to provide for redundant SAN fabrics and redundancy in the network.
  - 4.12.1 State the average mean time between failures (MTBF) for proposed equipment.

- 4.13 Equipment must be placed in standard APC racks. Cabling can be under floor and top of rack. Vendor is required to provide a diagram of where proposed equipment fits within a standard rack configuration.
- 4.14 The Center's data will be moved over time. The SAN at the old center, implemented through the McData Intrepid 6140, must be interconnected to the equipment at the new center to facilitate data movement.
  - 4.14.1 Favorable consideration will be given to Vendors that are able to provide seamless connectivity with the existing McData environment without requiring additional technologies such as routing technologies and be fully supported by our storage providers.
  - 4.14.2 Vendors must detail how they intend to provide interoperability between the two centers for an interim period of time as well as a permanent solution should ITS retain disaster recovery facilities at the present data center.
- 4.15 The core State network is built on Cisco equipment and the data center infrastructure will interface to the core network with a 10Gbs uplink to a Cisco 6500.
  - 4.15.1 Favorable consideration will be given to Vendors that are able to provide seamless connectivity to the core network.
  - 4.15.2 A notable proprietary function, VTP, has been employed on the network. Vendors are required to detail how VTP will be addressed.
- 4.16 The Vendor is required to list throughputs of ports as configured in the proposed system with bandwidth over-subscription noted. Information must include maximum achievable throughput, maximum sustained throughput, bits/second, packets/seconds, and other performance data.
- 4.17 Describe the capability of proposed SAN and data center switches to create virtual switches within a single physical switch. Indicate number of ports required to achieve switch virtualization.
- 4.18 List and discuss the network protocols supported by the proposed solution (MPLS, MPLS VPN, VRF-lite, etc.).
- 4.19 The proposed solution is required to support NPIV for the fiber channel storage solution.
- 4.20 Power consumption in the new data center is a concern for ITS. The Vendor must detail power requirements, cooling, and space requirements. ITS is implementing a standard APC rack configuration with hot aisle/cold aisle racking. The Vendor should state, if applicable, how proposed equipment conforms to these rack

requirements. In particular, address the air flow direction, both intake and exhaust.

- 4.21 Vendor must detail the application(s) used to manage the proposed equipment. For storage, ITS uses IBM TotalStorage Productivity Center (TPC) as a management tool and CA Spectrum and e-Health as network management tools. Favorable consideration will be given to solutions that integrate with these products. Vendor should detail other management features that are available.
- 4.22 Vendor may detail any features or functions specific to the proposed product/solution that differentiates the offering from that of another vendor. Vendor may discuss emerging technology support (e.g., 40GB, 100Gb Ethernet), support of MPLS, support for super aggregated VLANs, etc. (While Vendor may include brochures in the proposal, we are not looking for sales brochures in response to this item nor will we search throughout the proposal for a response.)
- 4.23 Vendor is reminded that any discrepancies in these specifications as it relates to the Vendor's proposal should be noted and may in fact require the Vendor to take exception.

## **5. Installation and Implementation**

- 5.1 The Vendor will assume complete and total responsibility as the prime contractor for all delivery and installation requirements. ITS will not contract with outside agents or suppliers to provide the additional services required to install any equipment included in the proposal. Vendor must state which technicians (OEM technicians, vendor technicians, and/or third-party technicians) will be responsible for the installation.
- 5.2 The Vendor must provide installation, integration, and acceptance testing as separate processes to adequately ensure that the equipment is fully operational, according to the specifications, and performing properly. If any item is considered dead on arrival, the Vendor is responsible for its immediate replacement.
- 5.3 The Vendor may propose contractual services that are not covered under the installation requirements to assist ITS with the implementation of the proposed solution. The Vendor must state what services are included as part of the installation and detail services that will require a separate statement of work (SOW). Cost for optional services must be clearly stated in Section VIII: Cost Information Submission.
- 5.4 Acceptance Testing

- 5.4.1 ITS Data Services shall accept or reject the awarded Vendor's proposed solution after a ten (10) business day testing period using testing criteria developed by ITS but with input from the awarded Vendor.
- 5.4.2 ITS Data Services will have the opportunity to evaluate and test the installed system to confirm that it performs without any material defects and performs pursuant to the specifications in RFP 3627 and the Vendor's response to this RFP.
  - 5.4.2.1 Vendor must be aware that both system and user testing will be an element of acceptance testing.
  - 5.4.2.2 Acceptance testing will verify that the system meets the functional and technical requirements as stated in this RFP.
  - 5.4.2.3 From a user standpoint, acceptance testing will verify that the system functions in accordance with the business, user, and technical specifications.
  - 5.4.2.4 Testing will include test data, scenarios, specific business cases, and administrative tasks.
  - 5.4.2.5 The awarded Vendor will have staff on-site to assist ITS in the acceptance testing.
- 5.4.3 In the event that the proposed solution fails to perform, ITS will notify the Vendor who shall have four (4) working days to correct the defects identified by ITS. Vendor shall have the option to replace the defective equipment/software.
- 5.4.4 Should Vendor fail to correct the defects or replace the defective equipment/software, ITS reserves the right to return the equipment/software at Vendor's expense and to cancel the supplement and/or purchase order.
- 5.4.5 Upon receipt of corrected or replaced equipment/software, ITS shall have another ten (10) business day acceptance period in which to evaluate/retest the equipment/software.

## **6. Training**

- 6.1 The Vendor must propose a training plan as related to day-to-day operations of the proposed solution.
- 6.2 The Vendor must provide training and knowledge transfer necessary to ensure the consistent and optimum operation of system.

- 6.3 The Vendor must fully document what training is available by product and provide a schedule and pricing for that training, including a price for post-implementation training, such as refresher training.

**7. Warranty/Maintenance**

- 7.1 Vendor must state the length of the warranty period, with the minimum acceptable time being twelve (12) months.
- 7.2 All equipment and software proposed must include a full parts warranty effective from the acceptance date, covering any and all defects in materials and workmanship.
- 7.3 Warranty/Post-Warranty coverage is defined as 24 x 7 x 365.
- 7.4 Defective equipment will be replaced or repaired.
- 7.5 Normally the manufacturer maintains equipment in the ITS Data Center. Vendor must provide details on how maintenance of the equipment will be provided.
  - 7.5.1 When 20% or more of the components fail, response time must be four (4) hours or less.
  - 7.5.2 Response time for routine service requests shall not be later than the next business day after receipt of call.
- 7.6 The Vendor must state the cost of warranty coverage, if any. Vendor must provide a cost for post-warranty maintenance for three years. Vendor must agree that in no event shall annual cost increases exceed five percent (5%). ITS may elect to prepay three year maintenance if cost effective.
- 7.7 ITS is sensitive to lifecycle costs, not only related to maintenance, but also upgrades, end-of-maintenance, and end-of-life issues. Describe planned lifecycle of proposed products and applications.
- 7.8 Describe the planned release of major software releases, feature releases, and maintenance releases, indicating time frames.

**8. Project Plan**

- 8.1 Vendors will include in the response, clearly tabbed, an initial project plan produced in Microsoft (MS) Project.
- 8.2 Vendors will use calendar days with the effective date of the contract being day one. All system components must be completely installed and fully functional, with acceptance testing completed, no later than two months from the date of the notice to proceed.

- 8.3 Vendors should make any necessary assumptions, but those assumptions must be documented. The plan will include timeframes, roles, and responsibilities. Information and tasks provided in the initial project plan will include, but not be limited to:
  - 8.3.1 Meet with ITS final design
  - 8.3.2 Complete final design
  - 8.3.3 Delivery of components
  - 8.3.4 Installation of specified components
  - 8.3.5 Completion of all system tests
  - 8.3.6 Training and skills transfer
  - 8.3.7 Presentation of SOW for further implementation requirements
- 8.4 This initial project plan and schedule will be evaluated on thoroughness, quality, and reasonableness, not on exact dates.
- 8.5 Within 14 days after contract execution, the awarded Vendor will submit to ITS a final project plan and work schedule, produced in MS Project.
  - 8.5.1 During the design phase the Vendor will provide an initial data input plan which will document how the existing and new data will be entered into the new system.
- 8.6 Throughout the process (but no less than bi-weekly), the awarded Vendor will submit to ITS a detailed and updated project work plan including task resources, work time (estimate and actual), Gantt charts, etc.
- 8.7 The project plan must identify, but not be limited to, these major tasks: installation, testing, documentation, user and technical support, user and technical training, and maintenance.

## **9. Vendor Qualifications**

The Vendor must provide a description of its organization. This description shall contain all pertinent data relating to the Vendor's organization, personnel and experience that would substantiate the qualifications and capabilities of the Vendor to perform the services described herein. At minimum the Vendor must describe:

- 9.1 Brief History of Company
- 9.2 Experience in the Field

Provide information as to the Vendor's background and experience related to providing SAN and Ethernet Switching solutions. The organizational experience information provided should be for engagements similar to the size and scope as defined in this RFP.

**9.3 Organization Size and Structure**

9.3.1 Describe the Vendor's size and organizational structure and state whether the Vendor is based locally, regionally, nationally, or internationally as well as its relationship to any parent firms, sister firms or subsidiaries.

9.3.2 Give the location of the Vendor's principal office and the number of executive and professional personnel employed at this office.

9.3.3 If incorporated, the name of the state of incorporation shall be included. (Note: In order to execute a contract, the Vendor's firm must be qualified to do business in the state of Mississippi on or before the date the contract is signed).

9.4 The Vendor must provide a copy of its most recent annual report, credit rating number from an industry-accepted credit rating firm, or report of an auditor's unqualified opinion of the financial stability of the firm.

**10. Additional Requirements**

10.1 ITS acknowledges that the specifications within this RFP are not exhaustive. Rather, they reflect the known requirements that must be met by the proposed system. Vendors must specify, here, what additional components may be needed and are proposed in order to complete each configuration.

10.2 Please be aware that this procurement, in its entirety, is a component of a construction project being managed by BOB. Any estimated completion date provided herein is a good-faith estimate based on the current project schedule. Construction delays may occur due to unforeseen circumstances outside of ITS' and the awarded Vendor's control that prevent the Vendor from completing some or all of the obligations for this award by the projected date (e.g., delay in need for delivery of equipment).

10.3 Vendor will invoice the Mississippi Department of Finance and Administration, Bureau of Building, Grounds and Real Property Management (BOB) with GS #527-008. The GS number must be used on all correspondence and invoices to BOB. The invoice must be sent to ITS for processing. Additional information regarding invoicing will be provided at time of award.

- 10.4 The Vendor must be aware and acknowledge that the resulting contract from this acquisition will be used to purchase additional equipment during the term of the award.
- 10.5 The Vendor must specify the delivery interval for the proposed equipment and be willing to contractually commit to a mutually agreed upon delivery date.
- 10.6 The Vendor must bid one price with supporting itemization the covers all costs associated with hardware, any software that may be necessary, installation, shipping, insurance while in transit, and other items. Vendor must show percent off list price for the initial purchase. Percent discount cannot decrease during the term of the agreement.
- 10.7 The Vendor may offer a catalog of products in the response. Specifically, the Vendor should provide catalog and cost discounts for Converged Network Adapters (CNA) as an option. ITS has concerns about the dark fiber distance between the current data center and the new data center. The network and SAN will be extended to connect the data centers initially for data migration and subsequently for disaster recover functions. Mainframe FICON connectivity may need extension. The Vendor should provide catalog and cost discounts on fiber extension solutions, so that if necessary, ITS can procure the equipment necessary to provide connectivity between the two centers.
- 10.8 Demonstrations
  - 10.8.1 At the discretion of the State, evaluators may request on-site presentations, demonstrations or discussions with any and all Vendors for the purpose of system overview and/or clarification or amplification of information presented in any part of the proposal. Vendors will be responsible for any charges associated with the on-site demonstrations. Such request may include visiting a reference account, with or without Vendor presence.
  - 10.8.2 If requested, Vendors must be prepared to make on-site demonstrations of system functionality and/or proposal clarifications to the evaluation team and its affiliates within seven calendar days of notification. Each presentation must be made by the project manager being proposed by the Vendor to oversee implementation of this project.
  - 10.8.3 Proposed key team members must be present at the on-site demonstration. The evaluation team reserves the right to interview the proposed key team members during this on-site visit.
  - 10.8.4 Although on-site demonstrations may be requested, they will not be allowed in lieu of a written proposal. Vendors are cautioned that the evaluators are not required to request clarification; therefore all proposals

should be complete and concise and reflect the most favorable terms available from the Vendor.

## **11. Scoring Methodology**

11.1 ITS will use any or all of the following categories in developing a scoring mechanism for this RFP prior to receipt of proposals. All information provided by the Vendors, as well as any other information available to evaluation team, will be used to evaluate the proposals.

11.1.1 Cost

11.1.2 Technical requirements

11.1.3 Vendor qualifications

11.1.4 Reference Accounts

11.1.5 Warranty and maintenance support

11.1.6 Project Work Plan

11.1.7 Value-Add

11.2 Each category included in the scoring mechanism is assigned a weight between one and 100. The sum of all categories, other than Value-Add, will equal 100 possible points. Value-Add is defined as product(s) or service(s), exclusive of the stated functional and technical requirements and provided to the State at no additional charge, which, in the sole judgment of the State, provide both benefit and value to the State significant enough to distinguish the proposal and merit the award of additional points. A Value-Add rating between 0 and 5 may be assigned based on the assessment of the evaluation team. These points will be added to the total score.

11.3 Proposals scoring less than 80% of technical requirements (exclusive of evaluation points for cost and added value) may be eliminated from further consideration.

11.4 Note that on-site demos and interviews of proposed implementation resources may be used to clarify a vendor's response and may, therefore, result in a rescoring.

11.5 During the evaluation process, the State reserves the right to consider past performance on contracts with the State.

## SECTION VIII

### COST INFORMATION SUBMISSION

Vendors must propose a summary of all applicable project costs in the matrix that follows. The matrix must be supplemented by a cost itemization fully detailing the basis of each cost category. The level of detail must address the following elements as applicable: item, description, quantity, retail, discount, extension, and deliverable. Any cost not listed in this section may result in the Vendor providing those products or services at no charge to the State or face disqualification. Vendor may duplicate this form for the three year configuration as well as for any proposed options.

| Part Number | Description         | Qty. | Unit Cost | Extended Cost | Unit Cost Installation | Extended Cost Installation |
|-------------|---------------------|------|-----------|---------------|------------------------|----------------------------|
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|             |                     |      |           |               |                        |                            |
|             | <b>GRAND TOTALS</b> |      |           |               |                        |                            |

## **SECTION IX REFERENCES**

Please return the following Reference Forms, and if applicable, Subcontractor Reference Forms.

### **1. References**

- 1.1 The Vendor must provide at least five (5) references consisting of Vendor accounts that the State may contact. Required information includes name, address, telephone number, and length of time the account has been a reference. Forms for providing reference information are included on the next page. The Vendor must make arrangements in advance with the account references so that they may be contacted at the Project team's convenience without further clearance or Vendor intercession. Failure to provide this information in the manner described may subject the Vendor's proposal to being rated unfavorably relative to these criteria or disqualified altogether at the State's sole discretion.
- 1.2 References should be based on the following profiles and be able to substantiate the following information from both management and technical viewpoints:
  - 1.2.1 The reference installation must be similar in function and size to the agency/institution for which this RFP is issued;
  - 1.2.2 The reference installation product/service must be configured similarly or identically to this RFP; and
  - 1.2.3 The reference installation must have been operational for at least twenty-four (24) months.
  - 1.2.4 Additional reference requirements:
    - 1.2.4.1 There are no additional reference requirements for this RFP.

### **2. Subcontractors**

The Vendor's proposal must identify any subcontractor that will be used and include the name of the company, telephone number, contact person, type of work subcontractor will perform, number of certified employees to perform said work, and five (5) references for whom the subcontractor has performed work that the State may contact. Forms for providing subcontractor information and references are included at the end of this section. The Vendor must note that the same requirements found in the References section apply to subcontractors.

## **REFERENCE FORM**

### **Complete five (5) Reference Forms.**

Contact Name:

Company Name:

Address:

Phone #:

E-Mail:

Project Start Date:

Project End Date:

Description of product/services/project, including start and end dates:

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## **SUBCONTRACTOR REFERENCE FORM**

**Complete a separate form for each subcontractor proposed.**

Contact Name:  
Company name:  
Address:  
Phone #:  
E-Mail:

Scope of services/products to be provided by subcontractor:

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**Complete five (5) Reference Forms for each Subcontractor.**

Contact Name:  
Company name:  
Address:  
Phone #:  
E-Mail:

Description of product/services/project, including start and end dates:

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## **EXHIBIT A STANDARD CONTRACT**

A properly executed contract is a requirement of this RFP. After an award has been made, it will be necessary for the winning Vendor to execute a contract with **ITS**. The inclusion of this contract does not preclude **ITS** from, at its sole discretion, negotiating additional terms and conditions with the selected Vendor(s) specific to the projects covered by this RFP.

If Vendor cannot comply with any term or condition of this Standard Contract, Vendor must list and explain each specific exception on the *Proposal Exception Summary Form* included in Section V.

**PROJECT NUMBER 37515  
PURCHASE AGREEMENT  
BETWEEN  
INSERT VENDOR NAME  
AND  
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES  
ON BEHALF OF  
MISSISSIPPI DEPARTMENT OF FINANCE AND ADMINISTRATION  
BUREAU OF BUILDING, GROUNDS AND REAL PROPERTY MANAGEMENT  
FOR THE  
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES**

This Purchase Agreement (hereinafter referred to as "Agreement") is entered into by and between **INSERT VENDOR NAME**, a **INSERT STATE OF INCORPORATION** corporation having its principal place of business at **INSERT VENDOR ADDRESS** (hereinafter referred to as "Seller"), and Mississippi Department of Information Technology Services having its principal place of business at 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201 (hereinafter referred to as "ITS" and/or "Purchaser"), as contracting agent for the Mississippi Department of Finance and Administration, Bureau of Buildings, located at 501 North West Street, Suite 1401-B, Jackson, Mississippi 39201 (hereinafter referred to as "BOB"), on behalf of ITS. BOB and ITS are sometimes collectively referred to herein as "State".

**WHEREAS**, Purchaser, pursuant to Request for Proposals ("RFP") No. 3627, requested proposals for the acquisition of certain equipment and software (hereinafter referred to as "Products") as listed in Exhibit A which is attached hereto and incorporated herein; and

**WHEREAS**, Seller was the successful proposer in an open, fair and competitive procurement process;

**NOW THEREFORE**, in consideration of the mutual understandings, promises, consideration and agreements set forth, the parties hereto agree as follows:

**ARTICLE 1 TERM OF AGREEMENT**

**1.1** This Agreement will become effective on the date it is signed by all parties and will continue in effect until all tasks required herein, including any post warranty maintenance/support specified in Exhibit A, have been completed. Seller agrees to complete all tasks required under this Agreement, with the exception of warranty service, on or before the close of business on August 30, 2010, or within such other period as may be agreed to by the parties.

**1.2** This Agreement will become a binding obligation on the State only upon the approval of the project by BOB's Public Procurement Review Board, receipt of Award Letter by Seller, and the issuance by ITS of the CP-1 Acquisition Approval Document.

## **ARTICLE 2 FURNISHING OF EQUIPMENT**

**2.1** Subject to the terms and conditions set forth herein, Seller agrees to provide and Purchaser agrees to buy as needed, the Products listed in the attached Exhibit A and at the purchase price set forth therein, but in no event will the total compensation to be paid hereunder exceed the specified sum of **\$INSERT AMOUNT** unless prior written authorization from ITS has been obtained. Upon approval of BOB, Purchaser shall submit a purchase order signed by a representative of Purchaser itemizing the Products to be purchased. The purchase order shall be subject to the terms and conditions of this Agreement. The parties agree that Purchaser reserves the right to adjust the quantities of purchases based upon the availability of funding or as determined necessary by Purchaser. Seller guarantees pricing for a period of twelve (12) months from the effective date of this Agreement. In the event there is a national price decrease of the Products bid during this time, Seller agrees to extend the new, lower pricing to Purchaser.

**2.2** The Products provided by Seller shall meet or exceed the minimum specifications set forth in RFP No. 3627 and the Seller's Proposal in response thereto.

## **ARTICLE 3 DELIVERY, RISK OF LOSS, INSTALLATION AND ACCEPTANCE**

**3.1** Seller shall deliver the Products to the location specified by Purchaser and pursuant to the delivery schedule set forth by Purchaser.

**3.2** Seller shall assume and shall bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout its possession thereof.

**3.3** Seller shall complete installation of the Products pursuant to the requirements set forth in RFP No. 3627. Seller acknowledges that installation shall be accomplished with minimal interruption of Purchaser's normal day to day operations.

**3.4** Seller shall be responsible for replacing, restoring or bringing to at least original condition any damage to floors, ceilings, walls, furniture, grounds, pavements, sidewalks, and the like caused by its personnel and operations during the installation, subject to final approval of ITS. The repairs will be done only by technicians skilled in the various trades involved, using materials and workmanship to match those of the original construction in type and quality.

**3.5** Seller shall be responsible for installing all equipment, cable and materials in accordance with all State, Federal and industry standards for such items.

**3.6** Purchaser shall accept or reject the Products provided by Seller after a thirty (30) calendar day testing period utilizing testing criteria developed by Purchaser. During the acceptance period, Purchaser shall have the opportunity to evaluate and test the Products to confirm that it performs without any defects and performs pursuant to the specifications set forth in RFP No. 3627. Purchaser shall notify Seller in writing of its acceptance of the Products.

**3.7** In the event the Product fails to perform as stated above, Purchaser shall notify Seller. Seller shall, within five (5) working days and at Seller's sole expense, correct the defects identified by

Purchaser or replace the defective Product. Purchaser reserves the right to return the defective Product to Seller at the Seller's expense and to cancel this Agreement.

#### **ARTICLE 4 TITLE TO EQUIPMENT**

Title to the equipment provided under this Agreement shall pass to Purchaser upon its acceptance of the equipment.

#### **ARTICLE 5 CONSIDERATION AND METHOD OF PAYMENT**

**5.1** Once the Products have been accepted by Purchaser as prescribed in Article 3 herein, Seller shall submit an invoice for the cost and shall certify that the billing is true and correct. Services will be invoiced as they are rendered. Seller shall submit invoices and supporting documentation to Purchaser electronically during the term of this Agreement using the processes and procedures indentified by the State. BOB agrees to pay Seller in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Sections 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the State within forty-five (45) days of receipt of the invoice. Seller understands and agrees that Purchaser is exempt from the payment of taxes. All payments shall be in United States currency. Payments by state agencies using the Statewide Automated Accounting System ("SAAS") shall be made and remittance information provided electronically as directed by the State. These payments by SAAS agencies shall be deposited into the bank account of the Seller's choice. No payment, including final payment, shall be construed as acceptance of defective Products or incomplete work, and the Seller shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement".

**5.2** Acceptance by the Seller of the last payment from the BOB shall operate as a release of all claims against the State by the Seller and any subcontractors or other persons supplying labor or materials used in the performance of any work under this Agreement.

#### **ARTICLE 6 WARRANTIES**

**6.1** Seller represents and warrants that Seller has the right to sell the equipment and license the software provided under this Agreement.

**6.2** Seller represents and warrants that Purchaser shall acquire good and clear title to the equipment purchased hereunder, free and clear of all liens and encumbrances.

**6.3** Seller represents and warrants that each unit of equipment delivered shall be delivered new and not as "used, substituted, rebuilt, refurbished or reinstalled" equipment.

**6.4** Seller represents and warrants that it has and will obtain and pass through to Purchaser any and all warranties obtained or available from the licensor of software or the manufacturer of the equipment.

**6.5** Seller represents and warrants that all equipment provided pursuant to this Agreement shall, for a period of **SPECIFY WARRANTY PERIOD** from the date of acceptance of each item of

equipment, be free from defects in material, manufacture, design and workmanship. Seller's obligation pursuant to this warranty shall include, but is not limited to, the repair or replacement of the equipment at no cost to Purchaser. In the event Seller cannot repair or replace an item of equipment during the warranty period, Seller shall refund the purchase price of the equipment, and refund any fees paid for services that directly relate to the defective hardware.

**6.6** Seller represents and warrants that the Products provided by Seller shall meet or exceed the minimum specifications set forth in RFP No. 3627 and Seller's Proposal in response thereto.

**6.7** Seller represents and warrants that all software furnished shall be free from material defects for a period of **SPECIFY WARRANTY PERIOD** after acceptance and will function in accordance with the specifications as stated in RFP No. 3627 and the Seller's Proposal in response thereto. If the software does not function accordingly, Seller shall, at no cost to Purchaser, replace the software or refund the fees paid for the software and for any services that directly relate to the defective software.

**6.8** Seller represents and warrants that there is no disabling code or lockup program or device embedded in the software provided to Purchaser. Seller further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Purchaser's use of the software and/or which would restrict Purchaser from accessing its data files or in any way interfere with the transaction of Purchaser's business. For any breach of this warranty, Seller at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of such disabling code, lockup program or device.

**6.9** Seller represents and warrants that the software, as delivered to Purchaser, does not contain a computer virus. For any breach of this warranty, Seller, at its expense, shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of any virus and shall be responsible for repairing, at Seller's expense, any and all damage done by the virus to Purchaser's site.

**6.10** Seller represents and warrants that its services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, the Seller shall, for a period of ninety (90) days from performance of the service, perform the services again, at no cost to Purchaser, or if Seller is unable to perform the services as warranted, Seller shall reimburse Purchaser the fees paid to Seller for the unsatisfactory services.

**6.11** Seller represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United

States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Seller agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Seller understands and agrees that any breach of these warranties may subject Seller to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Seller by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

**6.12** Seller represents and warrants that the system provided pursuant to this Agreement will pass both internal security audits and independent security audits. For any breach of the preceding warranty at any time during which the system is covered by warranty, maintenance and/or support, Seller shall, at its own expense and at no cost to Purchaser, remediate any defect, anomaly or security vulnerability in the system by repairing and/or replacing any and all components of the system necessary in order for the system to be secure.

**6.13** Seller represents and warrants that no official or employee of Purchaser, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in this Agreement. The Seller warrants that it has removed any material conflict of interest prior to the signing of this Agreement, and that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its responsibilities under this Agreement. The Seller also warrants that in the performance of this Agreement no person having any such known interests shall be employed.

**6.14** The Seller represents and warrants that no elected or appointed officer or other employee of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from this Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Seller, terminate the right of the Seller to proceed under this Agreement if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Seller to any officer or employee of the State of Mississippi with a view toward securing this Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event this Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Seller as it would pursue in the event of a

breach of contract by the Seller, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

#### **ARTICLE 7 INFRINGEMENT INDEMNIFICATION**

Seller represents and warrants that neither the hardware, replacement parts nor software, their elements or the use thereof violates or infringes upon any copyright, patent, trademark, servicemark, trade secret or other proprietary right of any person or entity. Seller, at its own expense, shall defend or settle any and all infringement actions filed against Seller or Purchaser which involve the hardware, software or other items provided under this Agreement and shall pay all settlements, as well as all costs, attorney fees, damages and judgment finally awarded against Purchaser. If the continued use of the products for the purpose intended is threatened to be enjoined or is enjoined by any court of competent jurisdiction, Seller shall, at its expense: (a) first procure for Purchaser the right to continue using such products, or upon failing to procure such right; (b) modify or replace them with non-infringing products, or upon failing to secure either such right, (c) refund to Purchaser the purchase price or software license fees previously paid by Purchaser for the products Purchaser may no longer use. Said refund shall be paid within ten (10) working days of notice to Purchaser to discontinue said use.

#### **ARTICLE 8 EMPLOYMENT STATUS**

**8.1** Seller shall, during the entire term of this Agreement, be construed to be an independent contractor. Nothing in this Agreement is intended to nor shall it be construed to create an employer-employee relationship or a joint venture relationship.

**8.2** Seller represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way directly or indirectly, expressly or by implication, to be employees of Purchaser. Seller shall pay, when due, all salaries and wages of its employees, and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation, and any other withholdings that may be required. Neither Seller nor employees of Seller are entitled to state retirement or leave benefits.

**8.3** Any person assigned by Seller to perform the services hereunder shall be the employee of Seller, who shall have the sole right to hire and discharge its employee. Purchaser may, however, direct Seller to replace any of its employees under this Agreement. If Seller is notified within the first eight (8) hours of assignment that the person is unsatisfactory, Seller will not charge Purchaser for those hours.

**8.4** It is further understood that the consideration expressed herein constitutes full and complete compensation for all services and performances hereunder, and that any sum due and payable to Seller shall be paid as a gross sum with no withholdings or deductions being made by Purchaser for any purpose from said contract sum.

#### **ARTICLE 9 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS**

Seller will be responsible for the behavior of all its employees and subcontractors while on the premises of any Purchaser location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive, or offensive to any of the staff and/or student body, will be asked to leave the premises and may be suspended from further work on the premises. All Seller employees and subcontractors who will be working at such locations to install or repair Products shall be covered by Seller's comprehensive general liability insurance policy.

#### **ARTICLE 10 MODIFICATION OR RENEGOTIATION**

This Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.

#### **ARTICLE 11 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

**11.1** In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Seller represents all contractors, third parties, and/or subcontractors Seller has assembled for this project. The Purchaser is required to negotiate only with Seller, as Seller's commitments are binding on all proposed contractors, third parties, and subcontractors.

**11.2** Neither party may assign or otherwise transfer this Agreement or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. This Agreement shall be binding upon the parties' respective successors and assigns.

**11.3** Seller must obtain the written approval of Purchaser before subcontracting any portion of this Agreement. No such approval by Purchaser of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Purchaser in addition to the total fixed price agreed upon in this Agreement. All subcontracts shall incorporate the terms of this Agreement and shall be subject to the terms and conditions of this Agreement and to any conditions of approval that Purchaser may deem necessary.

**11.4** Seller represents and warrants that any subcontract agreement Seller enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Purchaser, and that the subcontractor acknowledges that no privity of contract exists between the Purchaser and the subcontractor and that the Seller is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Seller. The Seller shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Seller's failure to pay any and all amounts due by Seller to any subcontractor, materialman, laborer or the like.

**11.5** All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between the Seller and the Purchaser, where such dispute affects the subcontract.

#### **ARTICLE 12 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of Purchaser to proceed under this Agreement is conditioned upon the availability of monies in the applicable IHL and State Agencies Capital Improvements Fund, as provided for by the Mississippi State Legislature via the sale of state general obligation bonds for the cost of this capital improvement. If the funds anticipated for the fulfillment of this Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Purchaser for the payments or performance due under this Agreement, Purchaser shall have the right to immediately terminate this Agreement, without damage, penalty, cost or expense to Purchaser of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Purchaser shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement.

#### **ARTICLE 13 TERMINATION**

Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this Agreement, the non-defaulting party may terminate the Agreement upon the giving of thirty (30) days written notice unless the breach is cured within said thirty (30) day period; (c) Purchaser may terminate the Agreement in whole or in part without the assessment of any penalties upon thirty (30) days written notice to Seller if Seller becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) Purchaser may terminate the Agreement without the assessment of any penalties for any reason after giving thirty (30) days written notice specifying the effective date thereof to Seller. The provisions of this Article do not limit either party's right to pursue any other remedy available at law or in equity.

#### **ARTICLE 14 GOVERNING LAW**

This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Seller expressly agrees that under no circumstances shall Purchaser be obligated to pay an attorneys fee, prejudgment interest or the cost of legal action to Seller. Further, nothing in this Agreement shall affect any statutory rights Purchaser may have that cannot be waived or limited by contract.

#### **ARTICLE 15 WAIVER**

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Agreement. A waiver by the State, to be

effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of the State.

#### **ARTICLE 16 SEVERABILITY**

If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the State's purpose for entering into this Agreement can be fully achieved by the remaining portions of the Agreement that have not been severed.

#### **ARTICLE 17 CAPTIONS**

The captions or headings in this Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or section of this Agreement.

#### **ARTICLE 18 HOLD HARMLESS**

To the fullest extent allowed by law, Seller shall indemnify, defend, save and hold harmless, protect and exonerate Purchaser, and the State, its Board Members, officers, employees, agents and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever, including without limitation, court costs, investigative fees and expenses, attorney fees and claims for damages arising out of or caused by Seller and/or its partners, principals, agents, employees, or subcontractors in the performance of or failure to perform this Agreement.

#### **ARTICLE 19 THIRD PARTY ACTION NOTIFICATION**

Seller shall notify Purchaser in writing within five (5) business days of Seller filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Seller or Purchaser by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Seller's performance under this Agreement. Failure of the Seller to provide such written notice to Purchaser shall be considered a material breach of this Agreement and the Purchaser may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

#### **ARTICLE 20 AUTHORITY TO CONTRACT**

Seller warrants that it is a validly organized business with valid authority to enter into this Agreement; that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

## **ARTICLE 21 NOTICE**

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: Mr. David L. Litchliter, Executive Director, Mississippi Department of Information Technology Services, 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201. BOB's address for notice is: Mr. Burton Spencer, Director of Administration, Mississippi Department of Finance and Administration, Bureau of Buildings, 501 North West Street, Suite 1401-B, Jackson, Mississippi 39201. The Seller's address for notice is: **INSERT VENDOR NOTICE INFORMATION**. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

## **ARTICLE 22 RECORD RETENTION AND ACCESS TO RECORDS**

Seller shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Agreement. The Purchaser, any state or federal agency authorized to audit Purchaser, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to this Agreement and to any of the Seller's proposals, books, documents, papers and/or records that are pertinent to this Agreement to make audits, copies, examinations, excerpts and transcriptions at the State's or Seller's office as applicable where such records are kept during normal business hours. All records relating to this Agreement shall be retained by the Seller for three (3) years from the date of receipt of final payment under this Agreement. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

## **ARTICLE 23 INSURANCE**

Seller represents that it will maintain workers' compensation insurance as prescribed by law which shall inure to the benefit of Seller's personnel, as well as comprehensive general liability and employee fidelity bond insurance. Seller will, upon request, furnish Purchaser with a certificate of conformity providing the aforesaid coverage.

## **ARTICLE 24 DISPUTES**

Any dispute concerning a question of fact under this Agreement which is not disposed of by agreement of the Seller and Purchaser shall be decided by the Executive Director of ITS or his/her designee. This decision shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute a breach under the terms of this Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

## **ARTICLE 25 COMPLIANCE WITH LAWS**

Seller shall comply with, and all activities under this Agreement shall be subject to, all Purchaser policies and procedures, and all applicable federal, state and local laws, regulations, policies and

procedures as now existing and as may be amended or modified. Specifically, but not limited to, Seller shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, national origin or disability.

#### **ARTICLE 26 CONFLICT OF INTEREST**

Seller shall notify Purchaser of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to Purchaser's satisfaction, Purchaser reserves the right to terminate this Agreement.

#### **ARTICLE 27 SOVEREIGN IMMUNITY**

By entering into this Agreement with Seller, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

#### **ARTICLE 28 CONFIDENTIAL INFORMATION**

**28.1** Seller shall treat all Purchaser data and information to which it has access by its performance under this Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of Purchaser. In the event that Seller receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Seller shall promptly inform Purchaser and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of this Agreement, shall continue in full force and effect, and shall be binding upon the Seller and its agents, employees, successors, assigns, subcontractors, or any party or entity claiming an interest in this Agreement on behalf of or under the rights of the Seller following any termination or completion of this Agreement.

**28.2** With the exception of any attached exhibits which are labeled as "confidential", the parties understand and agree that this Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to Seller. ITS will provide third party notice to Seller of any requests received by ITS for any such confidential exhibits so as to allow Seller the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

#### **ARTICLE 29 EFFECT OF SIGNATURE**

Each person signing this Agreement represents that he or she has read the Agreement in its entirety, understands its terms, is duly authorized to execute this Agreement on behalf of the parties and agrees to be bound by the terms contained herein. Accordingly, this Agreement shall not be construed or interpreted in favor of or against the State or the Seller on the basis of draftsmanship or preparation hereof.

#### **ARTICLE 30 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS**

All data, electronic or otherwise, collected by Seller and all documents, notes, programs, data bases (and all applications thereof), files, reports, studies, and/or other material collected and prepared by Seller in connection with this Agreement, whether completed or in progress, shall be the property of Purchaser upon completion of this Agreement or upon termination of this Agreement. Purchaser hereby reserves all rights to the databases and all applications thereof and to any and all information and/or materials prepared in connection with this Agreement. Seller is prohibited from use of the above described information and/or materials without the express written approval of Purchaser.

### **ARTICLE 31 NON-SOLICITATION OF EMPLOYEES**

Seller agrees not to employ or to solicit for employment, directly or indirectly, any of the Purchaser's employees until at least one (1) year after the expiration/termination of this Agreement unless mutually agreed to the contrary in writing by the Purchaser and the Seller and provided that such an agreement between these two entities is not a violation of the laws of the State of Mississippi or the federal government.

### **ARTICLE 32 ENTIRE AGREEMENT**

**32.1** This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned or "shrink-wrap" license included in any package, media or electronic version of Seller-furnished software, or any "click-wrap" or "browse-wrap" license presented in connection with a purchase via the internet. The RFP No. 3627 and Seller's Proposal in response to RFP No. 3627 are hereby incorporated into and made a part of this Agreement.

**32.2** The Agreement made by and between the parties hereto shall consist of, and precedence is hereby established by the order of the following:

- A.** This Agreement signed by both parties;
- B.** Any exhibits attached to this Agreement;
- C.** RFP No. 3627 and written addenda, and
- D.** Seller's Proposal, as accepted by Purchaser, in response to RFP No. 3627.

**32.3** The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Seller. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document ("A. This Agreement") and the lowest document is listed last ("D. Seller's Proposal").

### **ARTICLE 33 SURVIVAL**

Articles 6, 7, 14, 18, 22, 27, 28, 30, 31, and all other articles, which by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

#### **ARTICLE 34 DEBARMENT AND SUSPENSION CERTIFICATION**

Seller certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

#### **ARTICLE 35 NETWORK SECURITY**

Seller and Purchaser understand and agree that the State of Mississippi's Enterprise Security Policy mandates that all remote access to and/or from the State network must be accomplished via a Virtual Private Network (VPN). If remote access is required at any time during the life of this Agreement, Seller and Purchaser agree to implement/maintain a VPN for this connectivity. This required VPN must be IPSec-capable (ESP tunnel mode) and will terminate on a Cisco VPN-capable device (i.e. VPN concentrator, PIX firewall, etc.) on the State's premises. Seller agrees that it must, at its expense, implement/maintain a compatible hardware/software solution to terminate the specified VPN on the Seller's premises. The parties further understand and agree that the State protocol standard and architecture are based on industry-standard security protocols and manufacturer engaged at the time of contract execution. The State reserves the right to introduce a new protocol and architecture standard and require the Seller to comply with same, in the event the industry introduces a more secure, robust protocol to replace IPSec/ESP and/or there is a change in the manufacturer engaged.

For the faithful performance of the terms of this Agreement, the parties have caused this Agreement to be executed by their undersigned representatives.

**State of Mississippi, Department of  
Information Technology Services**

**INSERT VENDOR NAME**

**By: \_\_\_\_\_**  
**Authorized Signature**

**Printed Name: David L. Litchliter**

**Title: Executive Director**

**Date: \_\_\_\_\_**

**By: \_\_\_\_\_**  
**Authorized Signature**

**Printed Name: \_\_\_\_\_**

**Title: \_\_\_\_\_**

**Date: \_\_\_\_\_**

## **EXHIBIT A**